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October 3, 2002

BY ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch
Federal Communications Commission
445 Twelfth Street, SW, TW-A325
Washington, DC 20554

Ex Parte Comments of Inovonics Wireless Corporation

Re: Progeny LMS, LLC Petition for Rulemaking to Amend Part 90 of the Commission's Rules Governing the Location Monitoring Service, RM-10403

Dear Ms. Dortch:

Inovonics Wireless Corporation ("Inovonics") hereby submits the following *ex parte* comments to the Progeny LMS, LLC ("Progeny") Petition for Rulemaking in the above-captioned proceeding.[1] Inovonics opposes the proposal submitted by Progeny.

Background

Inovonics Wireless Corporation ("Inovonics" or the "company") develops, manufactures and sells short-range wireless communications products. In its 15-year history, Inovonics has shipped over 2 million radio frequency ("RF") products that operate in the 902-928 MHz industrial, scientific and Medical ("ISM") band, and expect to ship another 400,000 devices this year. Growth has been steady and Inovonics expects annual shipments of RF devices to exceed 1 Million within the next several years. The company's one-way signal and control products are utilized widely for life safety applications in security, health care, public safety, as well as remote metering and remote temperature measurement applications.

[1] In the Matter of Progeny LMS, LLC Amendment of Part 90 of the Commission's Rules Governing the Location and Monitoring Service to Provide Greater Flexibility, *Petition for Rulemaking*, RM-10403, Mar 5, 2002.

Inovonics was one of the early adopters of the 902 – 928 MHz ISM band, initially offering products to the security alarm industry in 1987. Inovonics has closely followed the evolution of the spread spectrum rules and embraced the philosophy of shared use of the 902 –928 MHz ISM band.

Operating under the frequency hopping provision in the 902 –928 MHz band, the company has developed a robust solution capable of reliable communications at the distances required in demanding environments. The needed range and penetration simply would not be practical at 2.4 GHz, particularly in case of battery powered portable actuation devices such as pendant transmitters used in medical and security applications.

Progeny's Proposal

Progeny has proposed significant revisions to the rules governing the location and monitoring service ("LMS") operation in the 902 – 928 MHz band. These changes would have serious negative impact on the many millions of Part 15 devices supplied by an increasing number of manufacturers and currently used in every part of the country. For Inovonics, and more specifically, the users of Inovonics products, the proposed rule changes would have a devastating impact. For example, the usable life of security products is typically four to eight years, however, a significant percentage of products are used well past eight years. Many of the users, elderly in retirement communities, small commercial establishments and the like, would not be aware of changes to the FCC regulations that would adversely impact the reliability of their security or life safety systems.

Restricted Real-Time Connection to the PSTN

Progeny's proposal to remove the restriction on real time connection to the public switched telephone network would change the nature of the LMS service by allowing high density continuous transmission at high power levels, but without the restrictions to power density afforded by spread spectrum solutions. The Commission reviewed this issue and responded on February 6, 1995 (adopted February 3, 1995),[2] and reaffirmed its position again on September 16, 1997 (adopted August 28, 1997).[3]

Elimination of the Safe Harbor Provision

Progeny also proposes the modification or elimination of the safe harbor provision. In its February 6, 1995 Order on Reconsideration, the Commission stated

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[2] *See* In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, PR Docket No. 93-61, FCC 95-41, 10 FCC Rcd 4695 (1995).

[3] *See* In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PR Docket 9361, FCC 97-305, 12 FCC Rcd 13942 (1997).

that, "[w]e hereby clarify that if Part 15 devices operate within the "safe harbor" provisions they will be deemed not to cause harmful interference to LMS operators." This ruling has been critical in that it provides a degree of certainty to users of Part 15 devices. The ruling was again addressed and reaffirmed by the Commission on March 21, 1996.

Elimination of the Restrictions on the Types of Communications

Progeny further proposes the elimination of restrictions on the types of communications that LMS operators can provide. There is no question that elimination of these restrictions, particularly in combination with the other provisions in the Progeny proposal, would serve to make the spectrum more valuable to Progeny and other current holders of LMS licenses. The restrictions on the type of communications were designed to allow the LMS service providers the ability to supply effective location services, not to provide a new band for voice and data services. Progeny's open-ended proposal to eliminate the restriction on the services offered would open the band to applications already met by other services.

Elimination of the LMS Spectrum Cap

Progeny goes on to propose the elimination of the spectrum cap that was designed by the Commission to insure the "diversity of use" of these licenses. Progeny offers no credible reason or benefit to the public interest. In combination with the other proposed changes, this valuable spectrum could become the property of a single entity in any location, effectively forcing out the Part 15 users. This outcome would simply serve to greatly enrich Progeny at the expense of existing and future Part 15 users.

It is noteworthy that Progeny bid on the LMS licenses with full knowledge of the restrictions clearly outlined in the rules. Progeny's proposed modification to the service rules would only serve to increase the value of its licenses by opening the band to a broad range of voice and other services not previously intended for this band. Furthermore, the importance of the balance between legitimate LMS applications and the many Part 15 applications has been clearly stated. These decisions have been a key part of the "ground rules" around which many of the Part 15 products have been designed.

The Commission's vision of an unlicensed band that would promote the development of technically creative products and re-use of the spectrum has been solidly realized. The spread spectrum rules have provided a catalyst for many innovative and financially viable products. Inovonics is one of a growing number of successful companies that have invested many millions of dollars to develop commercially viable products around the Part 15 Rules for license-free operation in the 902 – 928 MHz band. To change these rules at this point would be patently unfair to the many companies who have made significant investments to develop products and markets for their products and would not serve the public interest. Inovonics therefore requests that Progeny's petition be denied.

Any questions with respect to this matter should be directed to the undersigned.

Respectfully Submitted,

/s/ Donald J. Hume

Donald J. Hume
Chief Technology Officer

Cc: (via email)
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